

**BG 07-1**

**Tax Type**

**Bingo License & Tax Act**

**Issue:**

**Revocation of Charitable Games Act License**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**ABC CENTER**

**Licensee**

**Docket #        00-ST-0000  
Bingo License # 0-0000  
Pull Tabs License # 0-0000**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Jane Doe, *pro se*, for ABC Center

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Suspension (“Notice”) to ABC Center (“licensee”) stating that the licensee’s bingo license and pull tabs license were being suspended for a period of one year. The Notice alleges that the licensee violated Section 430.160 of the regulations concerning the Bingo License and Tax Act (“Bingo Act”) (230 ILCS 25/1 *et seq.*), which prohibits a person from receiving any money for participating in the management or operation of the game. The Notice also alleges that the licensee violated Section 432.160 of the regulations concerning the Pull Tabs and Jar Games Act (“Pull Tabs Act”) (230 ILCS 20/1 *et seq.*), which states that

only a bonafide member or employee of the licensee may participate in the sale of pull tabs. The licensee timely protested the Notice. At the hearing, the Department stipulated to the removal of the suspension of the pull tabs license. Jane Doe, who is the director of the licensee, is the only witness who testified during the hearing. The sole issue presented was whether the licensee's bingo license should be suspended on the basis that the licensee was paying its employees to work at the bingo games. For the following reasons, it is recommended that this matter be resolved in favor of the licensee.

FINDINGS OF FACT:

1. The licensee is a not-for-profit organization with a mission to provide healing services to victims of sexual assault and sexual abuse, their significant others, and to educate the community in an effort to end violence and victimization. (Licensee Ex. #3, p. 1; Tr. pp. 8-9)
2. Every Monday night, the licensee has some of its employees and/or volunteers work at the bingo parlor in Mt. Zion to raise money for its organization. The licensee receives the proceeds from the bingo. (Tr. pp. 18, 33)
3. The licensee's Employee Guidelines include the following under Bingo Procedures: "No staff or volunteer who work Bingo for the agency may be compensated monetarily for working." (Licensee Ex. #3, p. 18; Tr. p. 11)
4. On August 26, 2003, the Board of Directors decided to have the licensee's employees who receive group health insurance pay the increase in the cost for the insurance. This was the first time that the licensee asked its employees to pay a portion of their insurance. (Licensee Ex. #1; Tr. p. 10)

5. On December 16, 2003, the Board of Directors decided to set aside \$12,000 for staff bonuses to be distributed twice a year beginning in June 2004. (Licensee Ex. #2; Tr. pp. 10-11)
6. The licensee's fiscal year begins on July 1<sup>st</sup> and ends on June 30<sup>th</sup>. For the fiscal year beginning July 1, 2004, the licensee applied for a grant from the Illinois Coalition Against Sexual Assault that included a request for reimbursement for the bonuses. The licensee did the same for fiscal years 2006 and 2007. (Licensee Ex. #4, 6; Tr. pp. 11-12)
7. The licensee paid bonuses of \$500 in June and November 2004. Everyone who was a full-time staff member received a bonus. When the checks were printed the words "Bingo bonus" were on the memo line of the checks. (Dept. Ex. #1, p. 9; Tr. pp. 12-13,. 21)
8. On April 24, 2007, the Department issued a Notice of Suspension to the licensee indicating that its bingo license was being suspended for a period of one year. The Notice was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1)

#### CONCLUSIONS OF LAW:

Section 2 of the Bingo Act provides in relevant part as follows:

The conducting of bingo is subject to the following restrictions:

\* \* \*

(3) No person may receive any remuneration or profit for participating in the management or operation of the game, \* \* \*. 230 ILCS 25/2

The same prohibition is included in Section 430.160(d)(2) of the Department's regulations concerning the Bingo Act. See 86 Ill. Admin. Code §430.160(d)(2). In

addition, section 4 of the Bingo Act states in part as follows: “The Department of Revenue may, at its discretion, suspend or revoke any license if it finds that the licensee or any person connected therewith has violated or is violating the provisions of this Act.” 230 ILCS 25/4; see also 86 Ill. Admin. Code §430.190(b).

Section 3 of the Bingo Act incorporates by reference sections 4 and 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provide that the Department's determination is *prima facie* correct. 35 ILCS 120/4, 5. In the present case, the Department established its *prima facie* case by submitting into evidence, under the certificate of the Director, a copy of the Notice of Suspension. (Dept. Ex. #1) Once the Department established its *prima facie* case, the burden shifted to the licensee to establish, by a preponderance of evidence, that the Department's determination was incorrect. See 230 ILCS 25/5.1; 5 ILCS 100/10-15. “A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not true.” Avery v. State Farm Mutual Automobile Insurance Co., 216 Ill. 2d 100, 191 (2005).

The licensee argues that it paid bonuses to its employees to help them defray the cost of their health insurance and not to work at the bingo parlor. The licensee contends that the term “bingo bonus” was inadvertently put on the checks because the money that was used to pay the bonuses initially came from the licensee's bingo account. The licensee used money from the bingo account because it had not yet received grant money to pay for the bonuses, and it is not inappropriate to transfer money from the bingo account into the general account or vice versa. (Tr. p. 27) The Department did not provide arguments in response to the licensee's claims.

The evidence presented by the licensee is sufficient to meet its burden of showing by a preponderance of the evidence that the bonuses were paid as part of the employees' regular compensation. In August 2003, the Board of Directors decided to require the employees to pay a portion of their health insurance, and in December 2003, the Board authorized the payment of bonuses beginning in June 2004. The licensee indicated that the bonuses were intended to help the employees pay for the additional cost of the health insurance. When the bonuses were initially paid in June 2004, the licensee had not yet received grant money to pay the bonuses, so it transferred money from its bingo account to its general account. The taxpayer provided competent evidence that the term "bingo bonus" on the checks was a clerical error that referred to the account from which the money came. The licensee was aware of the rule that prohibits compensating employees for working at bingo, and the Employee Guidelines refer to the rule. This evidence supports a finding that the licensee's license should not be suspended.

Recommendation:

For the foregoing reasons, it is recommended that the Notice of Suspension be dismissed.

Linda Olivero  
Administrative Law Judge

Enter: November 27, 2007